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ALICE R. BOYLE, Tenant/Petitioner v. RICHARD HUMRICHOUSE, et al., Housing Providers/Respondents.	Case No.: RH-TP-06-28734 *In re:* 4616 Ellicott Street N.W.

FINAL ORDER

I. Introduction

On July 31, 2006, Tenant/Petitioner Alice R. Boyle filed tenant petition ("TP") 28,734 with the Rent Administrator at the Rental Accommodations and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA")[1] against Housing Providers/Respondents Richard Humrichouse, Prudential Carruthers Realtors, PCR Home Service, and PCR Property Management Services. The petition alleged violations of the Rental Housing Act of 1985 (the "Rental Housing Act" or the "Act") by Housing Providers at 4616 Ellicott Street N.W. (the "Housing Accommodation"). The petition asserted that: (1) Housing Providers failed to file the proper rent increase forms with the RACD; (2) a rent increase was

[1] On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs were transferred to the Department of Housing and Community Development ("DCHD"). The RACD functions were assumed by the Rental Accommodations Division of DCHD. The transfer does not affect any of the issues in this case.

taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; (3) the building in which the rental unit is located is not properly registered with the RACD; (4) services and/or facilities provided in connection with the rental of the unit had been substantially reduced; (5) retaliatory action had been directed against Tenant by Housing Providers for exercising Tenant's rights in violation of Section 502 of the Rental Housing Act; and (6) a notice to vacate had been served on Tenant in violation of Section 501 of the Rental Housing Act.

The parties appeared for a hearing on March 27, 2007. Tenant appeared *pro se*, testified in support of her claims, introduced documents into evidence, and presented testimony from Mary Kenny, a neighbor. [2] Housing Providers appeared through counsel, Brian Riger, and introduced certain documents into evidence. Housing Providers' sole witness was Richard Humrichouse, a realty agent named as a Respondent in this action.

For reasons set forth below, I conclude that Tenant has proven that the Housing Accommodation was not properly registered. As a consequence, Housing Providers were not entitled to impose a $200 rent increase in July 2005. In addition, I find that certain services and facilities at the Housing Accommodation were substantially reduced at certain times. In consequence, I award Tenant a total rent refund of $4,656.76, consisting of rent refunds totaling $3,800, refunds on account of reduced services and facilities of $420, and interest of $436.76 through April 8, 2008, the date of this decision.

[2] A list of the exhibits received in evidence is set forth in the Appendix. The exhibit list for the hearing reflects an exhibit, Petitioner's Exhibit ("PX") 119, a work order, that is not in the file of this administrative court. The exhibit list shows that the exhibit was not offered or admitted into evidence.

II. Findings of Fact

A. The Lease and Registration

On June 15, 2004, Tenant executed a lease for the Housing Accommodation here, a small single family house. Respondent's Exhibit ("RX") 100. Clauses in the lease, printed in all capital letters, stated that the property was not regulated by the rent stabilization program, was exempt from rent control, and that a copy of the exemption form and certificate of exemption were attached to the lease and delivered to the Tenant. Tenant initialed each of these clauses to acknowledge the exempt status of the Housing Accommodation. The rent stated in the lease was $25,140 for a one year term, an average of $2,095 per month. The property had also been rented to a previous tenant for $2,095 per month in 2003.

In fact, no exemption form had ever been filed for the property and no certificate of exemption had been issued. Although the property was eligible for an exemption, as a single family house whose owner owned no other rental properties in the District of Columbia, Mr. Humrichouse, an agent for Prudential Carruthers Realty, and his predecessor, Mary Ann McDermott, were based in Maryland and were not familiar with the District's requirement to register exempt properties. Mr. Humrichouse did not register the property until January 29, 2007, after his attorney informed him of the District's requirements. RX 202.

Although Mr. Humrichouse was not familiar with the District of Columbia registration requirements, he is a licensed real estate agent and a professional property manager who managed about 45 properties, many of them in Maryland.

On June 24, 2005, at Housing Providers' request, Tenant signed a second lease that provided for monthly payments of $2,295, an increase of $200 per month, starting July 1, 2005 (the "July 2005 rent increase"). RX 201. Tenant paid the increased rent. The second lease also asserted that the property was exempt from rent control because its owner held and operated less than four rental units. The lease stated that a copy of the exemption form and certificate of registration was attached to the lease and delivered to Tenant. At the time the second lease was executed, the Housing Accommodation was not registered with the Rent Administrator and no copy of an exemption form or certificate of registration was attached to the lease.

After Tenant filed her petition, Mr. Humrichouse sent Tenant a letter enclosing a renewal lease for the Housing Accommodation at an increased rent of $2,395 per month, an increase of $100 per month, effective November 1, 2006 (the "November 2006 rent increase"). Tenant sent Mr. Humrichouse a letter on August 16, 2006, refusing to pay the rent increase because it was "against the law." Petitioner's Exhibit ("PX") 114.

B. Services and Facilities Complaints

1. Air Conditioners

Ms. Boyle testified and submitted documentary evidence concerning a number of complaints involving the services and facilities at her house. The first of these arose immediately after she moved in.

The Housing Accommodation was an old house that had not been designed for air conditioning. It was hot when Tenant began moving into the house, with afternoon temperatures in the 90s. Tenant attempted to install an air conditioner that was in the basement, but it failed to

operate. She did not obtain an immediate response when she complained to the agent. On June 19, 2004, she purchased two air conditioners and installed them in the house. PX 100. A few days later, the owner had an air conditioner delivered to the house. The owner's air conditioner didn't work.

I find that air conditioners were a related facility that Housing Providers agreed to furnish under the lease. I find that Tenant was deprived of this facility for four days from June 16, 2004, the date the lease commenced, through June 19, 2004, when she purchased and installed the new air conditioners. [3]

2. Hot Water and Toilet Problems

In October 2004 Tenant's toilet clogged. Simultaneously, the hot water in the house failed. Tenant reported the problems to Housing Providers' agent immediately, but it was five days before Housing Providers arranged for a plumber to restore the hot water and to fix the toilet. In the meantime, Tenant and her two children had to bathe in a neighbor's house.[4] PX 101. Tenant was deprived of the use of hot water and one toilet for five days from October 10, to October 15, 2004.

[3] The record does not reveal whether Tenant was reimbursed for the air conditioners she purchased. This administrative court does not have authority to award reimbursement of tenants' out-of-pocket expenses.

[4] The record does not indicate whether there were other toilets in the house available for Tenant's use aside from the one that was clogged. In the absence of any proof on this point, I find that at least one other toilet was available. Tenant submitted a listing of three allegedly comparable housing accommodations, all of which contained a half bath in addition to a full bath. PX 117.

3. Broken Fence

A wooden fence separated Tenant's yard from that of her next door neighbor. At some point a section of the fence collapsed during a storm. PX 109. The fence had not been fixed as of the date of the hearing. Ms. Boyle and her neighbor, Ms. Kenny, were unable to recall the date that the fence collapsed. A Bi-Annual Condition Report dated February 24, 2006, notes that the fence needed repair. I find that Tenant was deprived of the protection of the fence from February 24, 2006, through the date of the hearing.

4. Other Tenant Complaints

In December 2005 Tenant reported to Housing Providers' agent that her washing machine was leaking. PX 107. She renewed the complaint in March 2006. PX 111. Sometime before Thanksgiving 2006 the problem became so serious that Tenant stopped using the washing machine and took her laundry to a laundromat. PX 116. Housing Providers arranged to have the washing machine repaired after Tenant registered a further complaint by email on January 10, 2007. PX 116. Tenant was able to use the washing machine until nearly five months after the date that the tenant petition was filed.

Tenant complained of a number of other problems at the Housing Accommodation. The record is insufficient to establish the nature, duration, or substantiality of these conditions.

In January 2005 Tenant experienced a problem with mice in the house. Tenant called an exterminator who made two visits on January 21 and February 3, 2005. PXs 102, 103. There were no further complaints after that time. The problem with rodent infestation was short lived and was quickly eliminated.

In April 2006 Tenant's basement flooded after a heavy rainstorm. Tenant reported the flooding to Housing Providers' agent on April 21 or April 22, 2006. On April 23,2006, Tenant arranged for a service to drain the area and to clean up. Housing Providers paid for this expense. RX 205. The basement flooded on at least two subsequent occasions, the latest being in November 2006, after the tenant petition was filed. On these occasions Housing Providers arranged to have the basement drained and cleaned up.

In December 2005 Tenant complained to Housing Providers' agent that the fuses in her house were blowing frequently. An electrician advised Tenant that the house was an old house and had a limited capacity for electrical appliances. There was no evidence that the electrical system in the Housing Accommodation was in violation of the Housing Code or that Housing Providers had agreed to furnish an up-to-date electrical system.

Tenant complained to Housing Providers' agent that the dishwasher was leaking in December 2005 and again in March 2006. PXs 107, 111. The leakage diminished after Tenant lodged her complaint, although Tenant did not know whether the Housing Providers had arranged to repair the machine. I find that the dishwasher was functioning at all times, and was repaired so that it no longer leaked seriously.

The other complaints that Tenant lodged with Housing Providers concerned matters that were minor. These included a back gate that did not close properly, a railing that needed painting, and a screen door that was missing a screen. In addition, Tenant complained that the back yard light could not be switched on without also turning on the lights in the basement. None of these problems was substantial.

C. The Notice To Vacate

On June 30, 2006, Mr. Humrichouse sent Tenant a letter "to notify you that the owner has decided not to renew your lease at the end of the lease term on June 30, 2006." The letter stated that "Your vacate date is July 31, 2006." PX 118.

Tenant remained in the house and filed her tenant petition on July 31, 2006. Housing Providers made no further demands for Tenant to vacate and did not initiate any legal action. In August 2006 Housing Providers sent Tenant a new lease incorporating an increase of $100 per month. Tenant refused to pay the rent increase. PX 114.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985 (the "Act"), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings ("OAH") has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

B. Parties

Respondent's counsel moved to dismiss Richard Humrichouse as a respondent on the grounds that he was an employee of the realty agent, Prudential Carruthers. I reserved decision on this motion and now deny it.

The Rental Housing Act defines a housing provider as "landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District." D.C. Official Code § 42-3501.03(15). Mr. Humrichouse acknowledged in his testimony that he was an agent and the record shows that he received rents on behalf of the owner. Therefore he qualifies as a housing provider under the terms of the Act. *See Budd v. Haendel*, TP 27,598 (RHC Dec. 16, 2004) at 15 ("any person who receives or is entitled to receive rent, or is the agent of the housing provider, is a proper party to be named as a respondent in a tenant petition"); *Diaz v. Perry*, TP 24,379 (RHC Apr. 20, 2001) at 7-8 (holding that a woman who received rent payments and acknowledged that she was an "agent for conducting business at the housing accommodation" was a proper party respondent).

C. Housing Providers' Claim of Exemption

The most significant allegation of the tenant petition is Tenant's claim that the Housing Accommodation was not properly registered with the Rent Administrator. It is undisputed that Housing Providers did not file a Registration/Claim of Exemption Form until January 29, 2007. Housing Providers assert, though, that the owner, Craig Puckett, is a small landlord who may claim the advantages of exemption notwithstanding that the property was not registered. *See Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592, 596-97 (D.C. 1991).

The starting point for analysis of this issue is the Rental Housing Act itself. The Act provides that its rent stabilization provisions, D.C. Official Code § 42-3502.05(f) through D.C. Official Code § 42-3502.19, except § 42-3502.17, "shall apply to each rental unit in the District except . . . ." D.C. Official Code § 42-3502. 05(a). The exception that Housing Providers seek here is D.C. Official Code § 42-3502.05(a)(3) which exempts:

> (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:
> (A) The housing accommodation is owned by not more than 4 natural persons;
> (B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;
> (C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. . . .

The party asserting an exemption has the burden of proving the exemption. *Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293, 1297 (D.C. 1990). Notwithstanding the requirements of the Act, a housing provider can claim the benefits of the small landlord exemption and will not be penalized for failing to file a claim of exemption if he or she can prove that: (1) the housing provider was reasonably unaware of the requirement of filing a claim of exemption; (2) the rent charged was reasonable; and (3) the housing provider is not a real estate professional. *Beamon v. Smith*, TP 27,863 (RHC July 1, 2005) at 7 (citing *Gibbons v. Hanes*, TP 11,076 (RHC July 11, 1984) at 3, *Boer v. D.C. Rental Hous. Comm'n*, 564 A.2d 54, 57 (D.C. 1989), and *Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592, 597 (D.C. 1991)).

Housing Providers assert that the owner, Craig Puckett, is not a real estate professional and that the Housing Accommodation is exempt. This argument fails for two reasons. First, Mr.

Puckett is not named in the tenant petition as a Housing Provider. The named Housing Providers, Richard Humrichouse, Prudential Carruthers Realtors, PCR Home Service, and PCR Property Management Services, are all real estate professionals. Second, even if the owner were named as a Housing Provider, he would be charged with the presumed expertise of the agents he engaged. *See Reid v. Quality Mgmt. Co.*, TP 11,307 (RHC Feb. 7, 1985) at 3, *aff'd sub nom Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73 (D.C. 1986); *see also Boer v. D.C. Rental Hous. Comm'n,* 564 A.2d 54, 57 (D.C. 1989) ("The RHC held in *Reid* that when a landlord is represented by a knowledgeable agent, it is 'altogether insufficient' for the landlord to be excused from violations of the [Rental Housing Act] on the ground that the agent did not understand its requirements") (quoting *Reid*, TP 11,307, at 3).

Mr. Humrichouse and his predecessor, Ms. McDermott, were licensed agents employed by a real estate company. They, and their corporate employer, professed to have expertise in leasing and property management. As real estate professionals, they cannot use their ignorance of the District of Columbia Rental Housing Act as a shield to protect themselves or their client from the consequences of violations incurred through their ignorance.

D. Tenant's Claims Concerning Registration

Two of the allegations of the tenant petition are implicated as a result of Housing Providers' failure to register the property with the Rent Administrator. Tenant asserts that Housing Providers failed to file the proper forms with the RACD and that the building was not properly registered with the RACD. I conclude that Tenant has proven both these claims since it is undisputed that Housing Providers failed to file a Registration/Claim of Exemption Form until January 2007.

The Rental Housing Act requires a housing provider to file a claim of exemption to obtain exemption from the rent control laws. D.C. Official Code § 42-3502.05(a)(3)(C). The Rental Housing Regulations require registration of all rental units covered by the Rental Housing Act, "including each rental unit exempt from the Rent Stabilization Program." 14 DCMR 4101.1. A housing provider who fails to file a proper Registration/Claim of Exemption Form "shall not be eligible for and shall not take or implement . . . [a]ny increase in the rent charged for a rental unit which is not properly registered." 14 DCMR 4101.9(b). As I discuss in my analysis of penalties below, it follows that the July 2005 rent increase was illegal.

E. Tenant's Claims Concerning Substantial Housing Code Violations

The tenant petition asserts that a rent increase was taken while the rental unit was not in substantial compliance with the District of Columbia Housing Regulations. I conclude that Tenant has failed to sustain her burden of proof on this issue. Although the record establishes that certain services and facilities were reduced at various times, there is no evidence that there were any substantial housing code violations when Housing Providers increased the rent as of July 1, 2005.[5] *See* 14 DCMR 4216.2 (listing housing violations that are "substantial" for purposes of determining compliance with the Act).

Because Housing Providers' rent increase was illegal for other reasons, Housing Providers' compliance with the Housing Regulations at the time of the rent increase is of no consequence. Tenant will obtain the relief she seeks on other grounds.

[5] Housing Providers' second rent increase, in November 2006, was implemented after the tenant petition was filed. For reasons discussed below, it is not properly before this administrative court.

F. Tenant's Claims Concerning Reduction in Services and Facilities

To establish a claim for reduction in services and facilities, Tenant "must present competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). "Further, if the reduced service is within the tenant's unit she must show that she notified the housing provider that service was required." *Id.* (citation omitted). *Accord, Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11. Tenant may claim for reduction of any facility that is associated with the rental unit, irrespective of whether it is listed in the lease. "The true concern is whether an individual who pays rent at a particular housing accommodation would be entitled to use that facility." *Pinnacle Realty Mgmt. Co. v. Voltz,* TP 25,092 (RHC Mar. 4, 2004) at 9, (quoting *Cobb v. Charles E. Smith Mgmt. Co.*, TP 23,889 (RHC July 21, 1998) at 9.

Applying these principles, I conclude that Tenant has proven a substantial reduction of facilities with respect to three problems — the malfunctioning air conditioners in June 2004, the lack of hot water and a working toilet in October 2004, and the broken fence from February 2006 through the date of the hearing. I conclude that Tenant failed to sustain her burden to present evidence of the existence, severity, or duration of her other complaints or to prove that the reduction in services and facilities was substantial. Although the inconvenience from the floods may have been substantial, the evidence indicates that the damage was repaired promptly and the duration of the condition was short. Moreover, except for the April 21, 2006, flood, there was no evidence of the dates of any of the floods or of how long the basement was flooded.

I also reject Tenant's claim of a substantial reduction in services and facilities arising out of the breakdown of her washing machine. Although the machine leaked prior to the date the

tenant petition was filed, and Tenant complained of this condition, I have found that the machine was still usable and any reduction in services and facilities was not substantial at that time. Tenant is barred from claiming an award for incidents that arose after the tenant petition was filed. *Zucker v. NWJ Mgmt.*, TP 27,690 (RHC May 16, 2005) at 7; *Redmond v. Majerle Mgmt. Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 46; *Menor v. Weinbaum*, TP 22,769 (RHC Aug. 4, 1993) at 5, n. 6. On the other hand, where a reduction in services and facilities occurred prior to the filing of the tenant petition and continued after the petition was filed, as in the case of the broken fence, Tenant may recover through the date of the hearing if the reduction continued through that date. *Redmond* at 46, citing *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 6.

Evidence of the existence, duration, and severity of a reduction in services and facilities is competent evidence upon which an Administrative Law Judge can find the dollar value of a reduction in rent ceiling or rent roll back. Expert or other direct testimony is not required. *Norman Bernstein Mgmt., Inc. v. Plotkin*, TP 21,282 (May 10, 1989) at 5. My computation of the value of Tenant's reductions in services and facilities follows:

Item	**Dates**	**Duration**	**Severity**	**Value**	**Award**
Air Conditioners	6/16 – 6/19 2004	4 days	Serious	$15/day	$60.00
Hot Water/Toilet	10/10 – 10/15 2004	5 days	Serious	$20/day	$100.00
Fence	2/24/06 – 3/27/07	13 months	Mild	$20/month	$260.00
Total Award					$420.00

The total value I assign to the reduction in Tenant's services and facilities is $420.

G. Tenant's Claim of Retaliatory Action

Tenant asserts in the tenant petition that "Retaliatory action has been directed against me/ us by my/our Housing Provider, manager or other agent for exercising our rights in violation of

section 502 of the Rental Housing Emergency [sic] Act of 1985." The Act prohibits a housing provider from taking "any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter." Retaliatory action "*may*" include "any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, [and] action which would unlawfully increase rent . . . ." D.C. Official Code § 42-3505.02(a) (emphasis added). The Rental Housing Regulations are more restrictive than the Act. They direct that retaliatory action "*shall* include . . . (a) Any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit; (b) Any action which would unlawfully increase rent. . . .". 14 DCMR 4303.3 (emphasis added).

Housing Providers raised Tenant's rent illegally in July 2005 and sought to evict Tenant from the Housing Accommodation illegally in June 2006. (See discussion in Section H below.) RX 201, PX 114. These acts constituted retaliatory action under the Rental Housing Regulations.

Under the Act and the Regulations retaliatory action is not necessarily a retaliatory act. Rather a retaliatory action, such as an illegal rent increase or threat of eviction, raises a presumption of retaliation if it occurs within six months of when the tenant engages in certain acts of protest. The Act provides:

> (b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action the tenant:
>
> (1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing

> accommodation or the rental unit into compliance with the housing regulations;
>
> (2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
>
> (3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
>
> (4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;
>
> (5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
>
> (6) Brought legal action against the housing provider.

D.C. Official Code § 42-3505.02(b). *See also* 14 DCMR 4303.4.

The presumption does not apply here because none of Tenant's written requests for repairs within six months of Housing Providers' notice of the August 2005 rent increase on June 30, 2005, or the notice to vacate on June 30, 2006, involved repairs which were necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations. PXs 105, 111. Moreover, even if the presumption did apply, I conclude that there is clear and convincing evidence that Housing Providers' acts were not retaliatory. Clear and convincing evidence has been described by the District of Columbia Court of Appeals as "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 426, n. 7 (D.C. 2006) (quoting *In re Dortch,* 860 A.2d 346, 358 (D.C. 2004)). The unrebutted evidence here shows that Housing Providers believed that the property was exempt from rent control and that they could therefore raise the rent or evict Tenant without having to comply with the

requirements of the Rental Housing Act. It follows that Tenant failed to prove that Housing Providers engaged in retaliatory action.[6]

H. Tenant's Claim Concerning the Notice To Vacate

Tenant's final assertion in the tenant petition is that she was served with a notice to vacate that violated the requirements of Section 501 of the Rental Housing Act. This section of the Rental Housing Act provides:

> (a) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

D.C. Official Code § 42-3505.01(a).

Housing Providers violated this provision in three respects: (1) Housing Providers sought to evict Tenant while Tenant continued to pay rent. (2) The notice to vacate did not contain a statement detailing the reasons for the eviction. (3) Housing Providers did not serve a copy of the notice to vacate on the Rent Administrator. I conclude, therefore, that Tenant has

[6] Even if Housing Providers had engaged in retaliatory action, the only available remedy under the Act would be a fine. D.C. Official Code § 42-3509.01(b). This would require a finding that the retaliation "was committed with intent to violate the Act or at least with awareness that this will be the outcome." *Miller v. D.C. Rental Hous. Comm'n,* 870 A.2d 556, 559 (D.C. 2005). As I note below in Subsection I, there is no evidence here that Housing Providers intended to violate the Act.

proven that she was served with a notice to vacate that violated the requirements of Section 501 of the Rental Housing Act.

I. Remedies

Prior to its amendment in August 2006, the Rental Housing Act provided for award of a rent refund "for the amount by which the rent exceeds the applicable rent ceiling . . . and/or for a roll back of the rent to the amount the [Administrative Law Judge] determines." D.C. Official Code § 42-3509.01(a) (2001). The Rental Housing Commission has consistently interpreted the statute to limit the remedy for reduced services and facilities to a reduction in the rent ceiling, limiting rent reductions to cases in which the rent charged exceeded the reduced rent ceiling. *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 14; *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8; *Hiatt Place P'ship v. Hiatt Place Tenants' Ass'n*, TP 21,249 (RHC May 1, 1991) at 26.

Although Tenant's petition, filed on July 31, 2006, is governed by the prior Act, there is no evidence of any rent ceiling for the Housing Accommodation because the Housing Accommodation was never registered with the Rent Administrator. In the absence of any evidence to establish a rent ceiling, I will use the initial rent charged of $2,095, which was also the rent charged to the previous tenant, as the benchmark for measuring the reduction in services and facilities. This is consistent with the Rental Housing Regulations which provide that the rent ceiling for a rental unit that loses its exclusion and comes under the provisions of the Rent Stabilization Program shall be the lesser of the rent ceiling previously authorized or "the rent for that rental unit during the first month of the rent period following the event which caused to rental unit to lose its § 205(e) exemption." 14 DCMR 4202.2(b). Because Tenant's allowance

for the services and facilities reduction is based on the initial rent charged, Tenant receives a refund for the entire value of the reduced services and facilities, or $420.

The Rental Housing Commission has held that rent refunds are appropriate to compensate tenants for illegal rent increases imposed when the housing provider is not properly registered, irrespective of the rent ceiling. *See Grayson v. Welch*, TP 10,878 (RHC June 30, 1989) at 13 ("if the rent charged was increased at a time when landlord was not properly registered, each such increase can be held to be illegal, whether or not the increase brought the rent charged above the rent ceiling"); *McCulloch v. D.C. Rental Hous. Comm'n*, 449 A.2d 1072, 1073 (D.C. 1982) (affirming hearing examiner's award of rent refund under the 1977 Rental Accommodations Act where the landlord failed to file amended registrations to document rent increases). *Cf. Sawyer v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 111, n. 15 (D.C. 2005) (holding that the housing provider's failure to file a timely amended registration statement to document a vacancy rent ceiling adjustment invalidated a subsequent rent increase based on that adjustment). I therefore hold that Tenant is entitled to a refund of the August 2005 rent increase demanded by and paid to Housing Providers through January 2007, when Housing Providers filed their Registration/Claim of Exemption Form. Once the unit was properly registered, Housing Providers were entitled to claim an exemption and were free to implement a rent increase. *Hammer v. Manor Mgmt. Corp.*, TP 28,006 (RHC May 17, 2006) at 17.

As I discussed above, I will not award any refund of the additional $100 November 2006 rent increase. The rent increase was demanded in August 2006, following the date that the tenant petition was filed.[7] PX 114. Because Tenant did not seek to amend her petition, I conclude that

[7] Although Tenant did not pay the August 2006 rent increase, the Rental Housing Commission has held that rent that is demanded may be subject to a rent refund even though it is not paid. *Kapusta v. D.C. Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997).

Housing Providers were not on notice of a claim that arose after the date of its filing. *See Parecco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 334 ("A petition must give a defending party fair notice of the grounds upon which a claim is based, so that the defending party has the opportunity to adequately prepare its defense and thus ensure that the claim is fully and fairly litigated.");[8] *Zucker v. NWJ Mgmt.*, TP 27,690 (RHC May 16, 2005) at 9 ("A respondent is entitled to be fully aware of the scope of the charges in order to have an effective opportunity to be heard and to explain his conduct"); *Menor v. Weinbaum*, TP 22,769 (RHC Aug. 4, 1993) at 5, n. 6 ("if the filing of the petition were not the cut off point for the issues to be adjudicated, the landlord would never know what was to be defended").

The record also provides no basis for an award of treble damages for bad faith or a fine against Housing Providers for a willful violation of the Rental Housing Act. A finding of bad faith requires proof that Housing Providers acted out of "some interested or sinister motive" involving "the conscious doing of a wrong because of dishonest motive or moral obliquity." *Third Jones Corp. v. Young,* TP 20,300 (RHC Mar. 22, 1990) at 9. I have found no evidence of such a motive here.

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[8] In *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 9, the Rental Housing Commission held that the Rental Housing Act's three year statute of limitations barred the tenant from challenging rent increases that occurred more than three years before the tenant petition was filed. The Commission then added that: "The tenant can, however, go forward from the date the tenant petition was filed to challenge any rent adjustments that occurred after the tenant petition was filed and before the record closed." The Commission cited no authority for this observation, which was dictum because the tenant in *Jenkins* did not challenge a rent increase that was implemented after the tenant petition was filed. In light of the Court of Appeals' decision in *Parreco*, and the other intervening cases, I conclude that the Commission's assertion in *Jenkins* misstated the law concerning rent increase claims arising after a tenant petition was filed. *Parreco* requires that a housing provider be given adequate notice of the claims that are in dispute. A housing provider cannot be expected to know that a tenant is challenging an action that occurred after the tenant petition was filed unless the tenant moves to amend the petition.

The Rental Housing Act provides for the imposition of fines in cases where a housing provider "willfully" "commits any . . . act in violation of any provisions of [the Rental Housing Act.]." D.C. Official Code § 42-3509.01(b)(3). A finding of willfulness requires a determination that Housing Providers intended to violate the law and possessed a culpable mental state. *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n. 6 (D.C. 1986). Moreover, the Rental Housing Commission has held that a fine may not be imposed as a remedy for a claim of reduction in services. A rent refund is the only remedy permitted by the statute. *Schauer v. Assalaam*, TP 27,084 at 14-15 (RHC Dec. 31, 2002) (citing D.C. Official Code § 42-3509.01(a) (2001).

The evidence here merely shows that the agents for the property manager, Ms. McDermott and Mr. Humrichouse, were ignorant of the registration requirement of the Rental Housing Act. There is no evidence that either of the agents violated the Act intentionally or acted out of any dishonest or sinister motive. Therefore I will impose no fines.

J. Tenant's Award

Tenant is entitled to a refund of the illegal $200 rent increase that Housing Providers imposed effective July 1, 2005, from the date of the increase through January 2007, when Housing Providers filed its claim of exemption. The rent refund for these 19 months is $3,800.

In addition, I award Tenant a refund of $420 on account of the reduction in services and facilities. Tenant's total refund is $4,220.

K. Interest

The Rental Housing Commission Rules implementing the Rental Housing Act provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Schedule A, below, computes the interest due on each month's overcharge at the five percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of the decision.[9]

[9] The overcharges apply to both the rent refunds arising from services and facilities reductions and those arising from Housing Providers' illegal rent increase in July 2005. The illegal rent increases terminated at the end of January 2007 when Housing Providers filed a claim of exemption. The remaining services and facilities refund for the broken fence ended in March 2007, when the hearing was conducted. The months held are prorated through the date of this decision, April 8, 2008, (8/30 = .2667) with similar pro rations for the services and facilities reductions in June 2004 (air conditioning) and October 2004 (hot water). The interest rate, . 0042, is the monthly 5% annual interest rate on judgments of the Superior Court of the District of Columbia on the date of this decision (.05/12 =.0042).

Interest Chart
TP 28,734
Date of Violation June 15, 2004, through
Date of OAH Decision April 8, 2008

Tenant's total award is $4,656.76, consisting of a rent refund of $3,800, the refund for reduced services and facilities of $420, and interest of $436.76.

IV. Order

Accordingly, it is this **8th** day of **April, 2008,**

ORDERED, that TP No. 28,734 is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED, that Housing Providers Richard Humrichouse, Prudential Carruthers Realtors, PCR Home Service, and PCR Property Management Services shall pay Tenant Alice R. Boyle **FOUR THOUSAND, SIX HUNDRED AND FIFTY-SIX DOLLARS AND SEVENTY-SIX CENTS ($4,656.76);** and it is further

ORDERED, that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937.1, 1 DCMR 2937.1; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are stated below.

/s/
Nicholas H. Cobbs
Administrative Law Judge